IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
MISC.CIVIL APPLICATION NO. 48 OF 2005

Smt.Rupali Ankit Shah Applicant

Vs.

Ankit Harin Shah Respondent

Mr.Sandeep V. Marne for applicant.

Ms.R.K.Mehta for respondent.

CORAM: B.H.MARLAPALLE,J.
June 22, 2005.

ORAL ORDER:

1. Heard the learned counsel for the respective parties. Rule. Respondent waives service.

2. Rule is made returnable forthwith.

3. This application is moved by the wife under Section 24 of the Code of Civil Procedure for transfer of the Marriage Petition No.A-7 of 2005 filed in the Family Court at Bandra, Mumbai to the Family Court at Pune where the wife is presently residing with her parents. They were married on 13-7-1997 at Mumbai as per the Hindu rites and out of the said wedlock a son is born on 12-2-1999. The

wife alleges that she was forced to leave the matrimonial home along with her son - Dhruv. She lodged complaints at the Mulund Police Station at Mumbai as well as Shahu Police Chowki at Pune. In December 2003 she filed petition E-612 of 2003 for maintenance under Section 125 of Cr.P.C. and the Family Court allowed the same by order dated 10-8-2004 and directed the husband to pay maintenance at the rate of Rs.2000/- per month to the applicant-wife and Rs.1000/- per month to the son. The husband subsequently initiated proceedings for separation.

4. The wife states that she has to attend to the minor son who is about 6 years old and it would be a great hardship to her if she is required to attend the Family Court at Mumbai. The husband on the other hand has filed affidavit-in-reply and opposed the application on the grounds that the wife is an established lawyer, she has no problem of financial resources and she can leave the child with her mother and attend the Court in Mumbai. The learned counsel for the applicant-wife admitted that she has enrolled as an Advocate but stated that she hardly has any legal work, leave alone a sound practice. He also

pointed out that in spite of the order passed by the Family Court about a year ago her husband has not taken any steps to pay the maintenance amount. He placed reliance on the decisions in the cases of Sunita Singh v. Kumar Sanjay reported in **(2001) 10 SCC 41** and Rajwinder Kaur v. Balwinder Singh reported in **(2003) 11 SCC 726.**

5. The decision of this Court was also cited in the case of Anisha Sanjay Hinduja v. Sanjay Shrichand Hinduja reported in **2003 (3) Mh.L.J. 139** wherein the petition filed in the Family Court at Pune was directed to be transferred to the Family Court at Mumbai.

6. The grounds made out by the wife regarding hardship and more particularly the failure of the husband to pay the maintenance amount as directed by the Family Court do make out a case for allowing this application. Hence the application is allowed and it is directed that the Marriage Petition No. A-7 of 2005 filed by the respondent-husband in the Family Court at Bandra, Mumbai shall stand transferred to the Family Court at Pune.

7. Rule made absolute accordingly with no order as to costs.

(B.H.MARLAPALLE,J.)